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ANOTHER BLOW TO TRIBAL SOVEREIGNTY: A LOOK AT CROSS-JURISDICTIONAL LAW-ENFORCEMENT AGREEMENTS BETWEEN INDIAN TRIBES AND LOCAL COMMUNITIES

Andrew G. Hill*

I. Introduction

*Perhaps the most basic principle of all Indian law, supported by a host of decisions, is that those powers lawfully vested in an Indian nation are not, in general, delegated powers granted by express acts of Congress, but rather "inherent powers of a limited sovereignty which has never been extinguished."*¹

The keystone of Indian tribes has long been their inherent sovereignty. Much confusion, however, surrounds the rights and powers that accompany the sovereignty of Indian tribes. Most laypersons today envision tribal sovereignty as the doctrine that allows tribes to conduct gaming on tribal lands, but do not consider the vast opportunities that Indian tribes have retained through their classification as sovereign entities. Among the powers that sovereigns possess are the right to tax, the right to establish courts and law enforcement agencies, the right to enact legislation, and the right to govern themselves independent of state and federal governments. Sovereign rights were once essential to maintaining the tribes' existence before Europeans colonized America, but the Supreme Court has since severely limited the powers of Indian tribes.² Despite reining in the powers and responsibilities Indian tribes may exert, the Supreme Court has also been careful to ensure Indian tribes retain their sovereign status.³

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1. COHEN'S HANDBOOK OF FEDERAL INDIAN LAW 206 (Neil Jessup Newton et al. eds., LexisNexis 2005) (1941) (quoting *United States v. Wheeler*, 435 U.S. 313, 322 (1978)).

2. See *infra* notes 9-11 and accompanying text.

3. See generally *Kiowa Tribe v. Mfg. Techs., Inc.*, 523 U.S. 751 (1998) (holding tribes immune from suits on contracts absent congressional abrogation).

The doctrine of inherent sovereignty of Indian tribes was first articulated by Chief Justice John Marshall in *Worcester v. Georgia*.⁴ Throughout his time on the Court, Chief Justice Marshall meticulously protected tribal sovereignty while limiting only two essentials of tribal powers—the right to convey land to anyone other than the federal government⁵ and the right to deal with foreign powers.⁶ Famously, Chief Justice Marshall refused to recognize the Indian tribes as “foreign nations.”⁷ Rather, Marshall classified Indian tribes as “domestic dependent nations.”⁸ This categorization limited state intrusion into the governance of Indian tribes and affirmed the tribes’ inherent right to exist as sovereign communities. Since Chief Justice Marshall’s ruling on the status of Indian tribes, however, the Court has set significant limitations on tribes’ inherent sovereignty. The Supreme Court has ruled that Indian tribes lack criminal jurisdiction over non-Indians.⁹ Furthermore, tribes have been held to have no preemptive power to regulate liquor sales on reservations,¹⁰ and they can no longer regulate hunting and fishing by non-Indians on non-Indian-owned land within their reservations.¹¹

Despite the erosion of tribal sovereignty, the authority of tribes to enact criminal laws “follows from their status as sovereign political entities.”¹² This authority includes “the power to administer justice through law enforcement and judicial branches.”¹³ To this end, “[m]any tribes have created law enforcement departments.”¹⁴ Generally, the principle set forth in *Worcester* remains intact: “[S]tate law does not apply to Indian affairs in Indian Country without congressional consent.”¹⁵ “[S]tate law” has included legislative enactments, judicial decisions, and state or local executive authority.¹⁶ But state law does apply in Indian Country to matters that do not affect Indians or their property and in matters where Congress has clearly indicated the

4. 31 U.S. (6 Pet.) 515 (1832).

5. *Johnson v. M’Intosh*, 21 U.S. (8 Wheat.) 543, 574 (1823).

6. *Worcester*, 31 U.S. (6 Pet.) at 559.

7. *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 18 (1831).

8. *Id.* at 16.

9. *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 212 (1978).

10. *Rice v. Rehner*, 463 U.S. 713, 726 (1983).

11. *Montana v. United States*, 450 U.S. 544, 566 (1981).

12. CHARLES WILKINSON, AM. INDIAN RES. INST., INDIAN TRIBES AS SOVEREIGN GOVERNMENTS 34 (Am. Indian Lawyer Training Program, Inc. 2004) (1988).

13. *Id.*

14. *Id.* at 35.

15. *Id.* at 40.

16. WILKINSON, *supra* note 12, at 40.

permissibility of state regulation.¹⁷ In addition, “state law normally applies to Indians outside of Indian Country.”¹⁸

The principles set forth in *Worcester* notwithstanding, the passage of Public Law 280 by Congress in 1953 gave six states jurisdiction over most crimes occurring on Indian lands within their borders.¹⁹ Public Law 280, which has come under high scrutiny by advocates of tribal sovereignty, hinders an essential part of that sovereignty—that Indian tribes can establish and maintain a fair court system to handle Indian matters independent of state or federal jurisdiction. Other states were allowed to elect similar transfers of power by their own initiative,²⁰ but Oklahoma is one state that declined to extend state jurisdiction within Indian Country. Oklahoma’s refusal to adopt Public Law 280, however, did not preclude it from entering voluntary cross-jurisdictional law-enforcement agreements with Indian tribes.

Oklahoma’s first cross-jurisdictional law-enforcement agreement between the Bureau of Indian Affairs (BIA) and an Oklahoma county took place on February 14, 1992.²¹ The first agreement in Oklahoma between a city and a tribe without the intervention of the BIA came a mere two months later, when the City of Stroud entered a cross-deputization agreement with the Sac and Fox Nation on April 8, 1992.²² As a result of an agreement between the State of Oklahoma and the BIA in 2006, cities and counties today “only need to sign simple addendums to cross-deputize tribal police.”²³ In mid-2007, records within the office of the Oklahoma Secretary of State showed that thirteen tribes, thirty-two counties, eighty cities, six district attorneys, three colleges, and eight state agencies had or have held cross-deputization agreements.²⁴

Initially, the purpose of cross-jurisdictional law-enforcement agreements was to help struggling Indian tribes with the costs associated with maintaining a police force, as well as to help the efficiency and effectiveness of the tribal police force. But the hopes of jump-starting tribal police forces had the actual

17. *See id.* at 40-41.

18. *Id.* at 40.

19. *Id.* at 41.

20. Public Law 280, Pub. L. No. 83-280, 67 Stat. 588 (1953) (codified as amended at 28 U.S.C. § 1360 (2006)).

21. OKLA. INDIAN AFFAIRS COMM’N, COMPACTS, CONTRACTS & AGREEMENTS, http://www.ok.gov/oia/Compacts_Contracts_and_Agreements/index.html (last visited June 23, 2010).

22. *Id.*

23. *Cross-Deputization Helps Solve Jurisdictional Issues in Oklahoma*, NEWSFROM INDIAN COUNTRY, May 28, 2007, available at http://indiancountrynews.net/index.php?option=com_content&task=view&id=603&Itemid=109.

24. *Id.*

effect of impeding the development of self-governing Indian tribes. Problems soon arose concerning what to do about questions of racism, economics, and tort liability that might arise from state jurisdiction on Indian lands. What was thought to be an agreement between local entities and tribal police forces to help establish self-determination soon became a struggle for Indian tribes to assert self-governance concerning law enforcement.

Part II of this comment discusses the racial problems that arise when state governments are allowed to exercise jurisdiction within Indian lands. Tribal lands remain the only jurisdictions within the geographic boundaries of the United States that prosecute based on the distinction of race.²⁵ Tribal courts are allowed to hear cases involving Indians; they cannot, however, try cases involving non-Indians despite the crime being committed on Indian land.²⁶ Part III of this comment describes the confusion and uncertainty within the court systems that accompany cross-jurisdictional law-enforcement agreements—especially if tort actions arise in the process of law enforcement. Part IV of this comment addresses the economic implications that arise when states begin to infringe on the self-governance of tribal nations. Essentially, small tribes located within or near large state municipalities will retain a substantial benefit from the agreement of cross-jurisdictional law enforcement, while large tribes will carry a highly increased burden when located around small, rural state jurisdictions. This comment concludes with Part V, which argues that cross-jurisdictional law enforcement does not help establish Indian self-determination and, in fact, deals a significant blow to the inherent tribal sovereignty of Indian nations.

It is becoming an increasingly alarming trend that tribes will blindly give up their inherent sovereign power to enforce laws and administer justice in hopes of progressing the concept of self-determination. Conversely, the theory of self-determination is firmly rooted in the ideas of self-governance and sovereignty that Indian tribes have increasingly given away in these cross-jurisdictional agreements with state and local entities. This comment concludes by reiterating the dangers and risks associated with allowing non-Indians to have law-enforcement jurisdiction within tribal lands.

25. Greg Guedel, *Why Are Tribal Courts the Last Race-Based Jurisdiction in the United States?*, NATIVE AM. LEGAL UPDATE, Dec. 26, 2008, available at <http://www.nativelegalupdate.com/2008/12/articles/why-are-tribal-courts-the-last-racebased-jurisdiction-in-the-united-states/>.

26. See 25 U.S.C. § 1301(2) (2006).

II. Race-Based Arrests and Prosecutions Within Indian Country Raise Constitutional Issues and Cause Law-Enforcement Confusion

*Our legislators here have much faith in law for white men; I wish it were possible to persuade them that it is equally beneficial to Indians.*²⁷

Within the United States, “American Indians . . . have disproportionately high rates of arrest and incarceration, and possibly longer prison terms than whites due to discretionary actions by criminal justice decision-makers.”²⁸ In fact, studies show that the rate of arrests of American Indians for all crimes is about twenty-five percent higher than for whites,²⁹ and the arrest rate for American Indians for driving while intoxicated is thirty- to forty-percent higher than for whites.³⁰ Although other factors or reasoning might exist, it is probable that discrimination is being practiced toward American Indians by predominately non-Indian police officers. This tendency does not necessarily indicate discrimination at only one stage of the criminal-justice process such as arrest, prosecution, or sentencing, but could instead indicate a “cumulative” effect of discrimination by law-enforcement personnel.³¹ Despite any justifications for this trend, the fact that it exists at all should raise red flags before allowing local non-Indian police officers to assert criminal jurisdiction over Indians within Indian Country.

A. Confusion Regarding Race of a Criminal Suspect During Pursuit, Arrest, and Detention

Agreements between Indian tribes and state or local governments are recognized as a worthy objective by political leaders from both sides for the purpose of addressing the practical needs and difficulties of running or maintaining a government. Nevertheless, race-based discrimination has

27. WILLIAM T. HAGAN, INDIAN POLICE AND JUDGES: EXPERIMENTS IN ACCULTURATION AND CONTROL 105 (Univ. of Neb. Press 1980) (1966) (quoting Indian Service member William Nicholson, 1876).

28. Zoann K. Snyder-Joy, *Self-Determination and American Indian Justice: Tribal Versus Federal Jurisdiction on Indian Lands*, in NATIVE AMERICANS, CRIME, AND JUSTICE 38, 44 (Marianne O. Nielsen & Robert A. Silverman eds., 1996).

29. Robert A. Silverman, *Patterns of Native American Crime*, in NATIVE AMERICANS, CRIME, AND JUSTICE, *supra* note 28, at 58, 66.

30. *Id.* at 69.

31. Snyder-Joy, *supra* note 28, at 44.

proven an inevitable barrier to implementing cross-deputization of law-enforcement officers between Indian tribes and local governments. The Constitution of the United States assures that race will not be an issue during lawful arrests.³² But this is not the case on tribal lands, where race is a factor taken into account when making arrests.³³

In *Duro v. Reina* the Supreme Court held that, as domestic dependent sovereigns, tribes have no power to exercise criminal jurisdiction over Indians who are not members of their own tribe.³⁴ Congress, however, recognized the severe limitations this ruling put on Indian tribes' sovereignty and swiftly superseded the ruling in *Duro*, affirming "the inherent power of Indian tribes . . . to exercise criminal jurisdiction over all Indians."³⁵ This decision by Congress ensured that tribes' jurisdictional powers over other Indians remain extensive, furthering the notion that Indian Country remains the only jurisdiction within the geographic boundaries of the United States that still determines prosecutorial decisions based on whether the accused is an Indian.³⁶

The Court ruled in *Oliphant* that tribal courts are forbidden to assert jurisdiction over non-Indian criminal defendants.³⁷ While this characteristic of tribal jurisdiction is essential to keeping non-Indians from being haled into tribal courts and having to face a foreign court process, it necessarily circumscribes an important piece of the tribes' inherent sovereignty by limiting tribal governance. Moreover, to allow local officials to exert jurisdiction over Indians on tribal land, make arrests on tribal land, and expose Indians to state-court systems further reduces the importance not only of tribal police officers, but of tribal courts as well.

Opportunities for cross-deputized police officers from neighboring communities to discriminate during the pursuit, arrest, or detention of suspects will not only be possible, but likely, as officers struggle with confusing jurisdictional requirements that arise from race-based decisions. The first law-enforcement officer responding to a crime will initiate an investigation and may detain a suspect.³⁸ The law-enforcement officer will then be required to

32. See U.S. CONST. amend. XIV, § 1.

33. E.g., Greg Guedel, *Blackfeet Nation Enters into Cross-Border Law Enforcement Pact*, NATIVE AM. LEGAL UPDATE, Aug. 7, 2009, available at <http://www.nativelegalupdate.com/2009/08/articles/blackfeet-nation-enters-into-crossborder-law-enforcement-pact/>.

34. 495 U.S. 676, 688 (1990), superseded by statute, 25 U.S.C. § 1301(2) (2006), as recognized in *United States v. Lara*, 541 U.S. 193 (2004).

35. 25 U.S.C. § 1301(2).

36. *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 212 (1978).

37. *Id.*

38. ANDREA WILKINS ET AL., CRIMINAL JUSTICE IN INDIAN COUNTRY: REDUCING CRIME

make a decision as to whether the suspect's actions should be handled by tribal or non-Indian law enforcement.³⁹ Subsequently, these officers must determine where to refer the criminal suspect—the United States attorney's office, the local district attorney, or the tribal court.⁴⁰ This decision of the law-enforcement officer is not only confusing, but also could have far-reaching implications for the severity of punishment received by the criminal suspect.

Tribal courts have restricted criminal jurisdiction and may hear only cases involving Native Americans accused of misdemeanors or crimes not listed in the Major Crimes Act.⁴¹ The cases that do go before tribal courts, however, are often handled very differently from those before state or federal courts, and the punishments are often viewed by mainstream culture as minor or insignificant when compared to the crime. This is because tribal communities and courts alike often take a cue from the traditional peacemaking theory of jurisprudence, which Indians have historically employed.⁴²

For instance, a tribal member convicted of drunk driving might not receive a fine in tribal court but instead may be "ordered to cut firewood for an elderly community member."⁴³ Likewise, hunting violators brought before a tribal court may be ordered to provide meat for tribal members attending celebrations or wakes.⁴⁴ Because state and local authorities could have difficulty accepting the fate of a criminal suspect if taken to tribal court, officers might be more inclined to refer the Indian suspect to state or federal court for fear of a suspected criminal not receiving an "appropriate" punishment from tribal courts.

THROUGH STATE-TRIBAL COOPERATION 8 (2008), http://www.ncsl.org/Portals/1/documents/statetribe/CJIC_08.pdf.

39. *Id.*

40. *Id.*

41. Major Crimes Act, 18 U.S.C. 1153 (2006) (granting jurisdiction to the federal government over the following crimes: murder, manslaughter, assault with intent to commit murder, kidnapping, rape, statutory rape, assault with intent to commit rape, incest, assault with a dangerous weapon, assault resulting in serious bodily injury, arson, burglary, robbery, and larceny); see EILEEN LUNA-FIREBAUGH, TRIBAL POLICING: ASSERTING SOVEREIGNTY, SEEKING JUSTICE 27 (2007).

42. Joan Abrams, *Who's The Law of The Land?*, in NATIVE AMERICANS, CRIME, AND JUSTICE, *supra* note 28, at 148, 148.

43. *Id.*

44. *Id.*

B. Open Hostilities Between Indian Tribes and Rural Communities Cause Prejudicial Bias in the Application of Police Force

*Indians and their non-Indian neighbors have not historically been allies, and the rift between Indian and rural communities runs deep and is not easily overcome by pointing out their common characteristics and experiences. . . . At the very best, Indian and rural relationships may still be marked by a feeling of separateness; at the very worst, open hostility remains.*⁴⁵

Crime is an increasing problem in Indian Country. "The overall occurrence of violent crime, including domestic violence, is disproportionately high in Indian Country."⁴⁶ In fact, American Indians are more than twice as likely to become victims of violent crime as will the general United States population.⁴⁷ These facts make it crucial that Indians "feel comfortable and safe in contacting their police and in reporting criminal victimization."⁴⁸ This is not always the case:

Despite these starting numbers, studies show crime is underreported in Indian Country. The research credits the failure to report crime to a distrust of the police, shame and humiliation associated with certain kinds of crime and fear of retaliation. . . . Often tribal members are reluctant to report crime as complicated family and clan relationships between victims, offenders and even tribal police officers discourage it. Also, tribal members may be reluctant to report another Indian to a state or federal agency, which could bring the weight of a foreign system down on the perpetrator.⁴⁹

A report conducted in 2004 by the United States Department of Justice "found that American Indians are twice as likely as other races to be victims of violence."⁵⁰ While whites and blacks primarily tend to be victims of

45. Joanna M. Wagner, Special Feature, *Improving Native American Access to Federal Funding for Economic Development Through Partnerships with Rural Communities*, 32 AM. INDIAN L. REV. 525, 551 (2007-2008).

46. WILKINS ET AL., *supra* note 38, at 3.

47. *Id.*

48. LUNA-FIREBAUGH, *supra* note 41, at 92.

49. WILKINS ET AL., *supra* note 38, at 3.

50. Richard Roesler, *Bill Aims to Expand Tribal Cops' Authority*, SPOKANE SPOKESMAN-REV., Feb. 27, 2008, at A1.

violence by someone of their own race, the Department of Justice study indicates “that Indians are primarily victimized by members of other races.”⁵¹ Robberies and assaults of tribal members are committed by whites or blacks at least two-thirds of the time, and even more appalling are the numbers for sexual assault revealed by the study.⁵² Federal statisticians reported that of all Indians raped or sexually assaulted, eighty-six percent of the attacks were committed by whites or blacks.⁵³

Although statistics reveal that Indians are far more susceptible to violent crimes,⁵⁴ apprehension still exists among many Indians about reporting crimes to any law-enforcement officer who is not a part of the tribal police force.⁵⁵ This further emphasizes the need of the tribal community to keep a police force that is viewed as separate and distinct from the non-Indian police force in order to increase the reporting of crimes. If tribal police forces continue to enter agreements with non-Indian police departments, the fears of tribal members to report crimes may increase, and crime rates against Indians will continue to go unreported, potentially resulting in a drastic rise in the amount of violent crimes committed against tribal members.

Along with racial prejudice, myriad social implications within Indian Country must be taken into account when considering the effects of cross-jurisdictional law-enforcement agreements. Native Americans are consistently viewed as “one of the poorest minority groups in the nation.”⁵⁶ “Issues associated with poverty on tribal lands and substandard health conditions--including a life expectancy rate far below the national average, all contribute to increased criminal activity and high victimization rates within Native communities.”⁵⁷ Poor educational systems, high unemployment rates, rampant drug and alcohol abuse, domestic violence, sexual assault, mental illness, and high suicide rates all contribute to a complex and often troubling social portrait for Indian tribes that underscores the need for some type of diversity training of local police officers in order successfully to implement cross-jurisdictional law-enforcement agreements.⁵⁸

While both tribal and non-Indian police officers are faced with the challenges of “fulfilling [their responsibilities] to provide for . . . effective,

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. WILKINS ET AL., *supra* note 38, at 3.

56. *Id.* at 10.

57. *Id.*

58. *Id.*

efficient and safe operation[s],” tribes alone are left to “protect[] tribal culture, tradition and membership.”⁵⁹ Additionally, “[w]hile Americanization and modernization [have] caused extensive and massive changes in tribal justice and law and order systems, many Indian nations still hold true to their fundamental beliefs to create and live by holistic philosophies.”⁶⁰ It is likely that problems will erupt and discrimination lawsuits may arise because non-Indian law-enforcement officials are either unaware of or in disagreement as to the fundamental beliefs of certain Indian tribes.

To safeguard against these potential problems, the rural communities currently entering these cross-jurisdictional law-enforcement agreements will need to incorporate multicultural training and diversity awareness into their current training programs in order to ensure that racial discrimination is reduced. Since the 1960s, law-enforcement officers have engaged in some type of “cultural ‘awareness’ or ‘sensitivity’ training” to calm “hostile relationships between police and ‘racialized’ communities” such as Indian tribes.⁶¹ Unfortunately, these training efforts often create additional problems as officers, asked to reflect on their own beliefs or stereotypes, sometimes feel that they are being attacked on a personal level for “who they are and how they think.”⁶² As one training instructor observed, “Because we’re talking about people’s values, we’re talking about what makes them a person, and we’re asking people to look at themselves, reflect on themselves. . . . It’s quite an uncomfortable process for these people. When something’s uncomfortable for you, then it’s a natural reaction sometimes to be hostile.”⁶³

Another limitation of multicultural training is that non-Indian officers often are merely “looking for guidance on how to manipulate” their techniques in order to comply with anti-discrimination rules.⁶⁴ This distorts the objective of multicultural training—from “enhanc[ing] police-community relations” to the

59. Ada Pecos Melton et al., *Integrated Justice Systems in American Indian Communities Planning Series: Understanding the Tribal Justice and Law Enforcement Environment*, AM. INDIAN DEV. ASSOC. Q., Summer 2004, at 1, 8, available at <http://www.aidainc.net/CRD%20Envir.pdf>.

60. *Id.* at 2.

61. BARBARA PERRY, *POLICING RACE AND PLACE IN INDIAN COUNTRY: OVER- AND UNDERENFORCEMENT* 91 (2009).

62. *Id.* at 92.

63. *Id.*

64. *Id.* at 93 (“One officer specifically asked how he could stop a vehicle driven or occupied by black people, which for him was ‘suspicious’ in his territory.”).

opposite purpose of “mask[ing] the racism” that some police employ during their daily routines.⁶⁵

Even with the implementation of multicultural-training and diversity-awareness programs, it will be difficult to erase the cultural differences between Indians and non-Indians. The implementation of cross-jurisdictional law-enforcement agreements will ultimately lead to discriminatory arrests and only further perpetuate the long-standing animosity between Indian tribes and many rural communities.

C. Underpolicing and Overpolicing in Indian Country

Many Native Americans who have seen the rise of non-Indian law enforcement in Indian Country feel that they are being underserved and underprotected because of their race.⁶⁶ Studies indicate that virtually all communities comprised of racial minorities “are subject to law enforcement’s tendency to underpolice—and thus under-protect—their communities.”⁶⁷ Furthermore, there appears to be a trend for federal officials to avoid their duty to investigate and prosecute crimes in Indian Country.⁶⁸ This could be due in part to non-Indian law-enforcement officers’ perspectives that Indians are more “deserving” of crime because of the fact that crime rates on tribal lands are so high.⁶⁹ This reluctance of non-Indian law-enforcement officials to recognize Indians as victims sidesteps the culpability of the offender by blaming the Indian victims for their own harm.⁷⁰ Another common form of belief among non-Indian police forces is the notion that Indians “overplay the race card” for political reasons and therefore “bring[] stereotypes upon themselves.”⁷¹ Whatever the reasoning, it is a “truism” in society and among law-enforcement officers that, more often than not, Native Americans are somehow more “deserving” of crime than non-Indians.⁷²

It seems logical that entering into cross-jurisdictional law-enforcement agreements with non-Indian police forces would provide more resources, funding, and overall police presence in Indian Country. But in reality, the fact of local police forces’ failure adequately to protect Indian Country would only

65. *Id.*

66. *Id.* at 61.

67. *Id.*

68. *Id.*

69. *Id.* at 62.

70. *Id.* at 62-63.

71. *Id.* at 63.

72. *Id.* at 62.

be exacerbated by the enactment of such agreements. These agreements, which seemingly would help understaffed and underfunded tribal police forces, would in actuality merely add a false sense of security for Indians as they began to rely more on non-Indian law-enforcement officials who have already demonstrated they are apprehensive about patrolling, protecting, and serving Indian communities. Moreover, the distrust that Indians have for non-Indian police forces could lead to increased crime rates, as underreporting of crimes on tribal lands would swell.

Underpolicing in Indian Country does more than affect the immediate safety of Indians. The “failure of law enforcement to intervene in [criminal] events” causes Native Americans to believe that non-Indian police officials view Indian victims’ lives to be of less worth than others’ lives.⁷³ This has a profound effect not only on perpetrators of crimes against Indians, but on *future* perpetrators of crimes against Indians who would see “no serious repercussions” for committing such crimes.⁷⁴

The irony of non-Indian police surveillance in Indian Country is that the disproportionately high monitoring “does not necessarily result in heightened protection,” as local police officers often patrol Indian Country for the purpose of pursuing Native American offenders rather than protecting Native American victims.⁷⁵ Indians “have reason to believe that they are singled out . . . simultaneously for both undue attention and inattention” by non-Indian police officers.⁷⁶

The harsh realities of life in Indian country—higher criminality, alcohol abuse, and violence—cause non-Indian police officers to view Indian Country as “troublesome,” thereby furthering the stereotypical belief of the deviance of Indians in order to justify the non-Indian police forces’ overpolicing of Indian lands. Ultimately, discriminatory policing by non-Indian police officers could cause confused identities of victims and suspects in the eyes of the police officers based solely on which participant is an Indian.⁷⁷ This view of Indians is inherently problematic, especially when entering cross-jurisdictional law-enforcement agreements, because Indians are often stereotypically viewed by non-Indians as alcoholics who cannot be trusted and are prone to criminal

73. *Id.* at 71.

74. *Id.* at 65.

75. *Id.* at 61.

76. *Id.* at 47.

77. See Robynne Neugebauer, *First Nations People and Law Enforcement: Community Perspectives on Police Response*, in INTERROGATING SOCIAL JUSTICE: POLITICS, CULTURE AND IDENTITY 247, 256 (Marilyn Corisanos & Kelly Amanda Train eds., 1999).

activity.⁷⁸ This stereotype-driven focus also creates a cycle of self-fulfilling prophecy in which the undue attention paid to Indians leads to higher crime rates in Indian Country.⁷⁹ These elevated crime rates will then draw more attention to Indian Country as an area more prone to crime, which will “again lead to inflated rates of detection and arrest” of Indians.⁸⁰

Boundaries, specifically the boundaries between Indian Country and local communities, “symbolically . . . determine and reinforce ethnic separation and segregation.”⁸¹ Consequently, these boundaries become important in reinforcing the historical racial profiling of Indians by law-enforcement officials.⁸² Indians have stated that they feel they have been singled out, targeted, and stopped for searches merely because of their dark skin, dark hair, and Indian ethnicity.⁸³ The experience of one Indian in Montana is typical:

I’ve seen [police] just sit there by that bridge—that’s the border—and they’ll sit here all day and just keep stopping us when we have tribal plates. It’s like, as soon as we leave the res, we’re stopped for any or no reason. It makes you not wanna leave, you know . . . ?⁸⁴

With this type of documented racial profiling, it is not incomprehensible to think that, by extending jurisdiction of non-Indian police into Indian Country, Indians will be targeted and singled out by police officers acting on their own personal beliefs that Indians are the source of criminal activity within their own land.

This discriminatory behavior adds to Indians’ feelings that they cannot trust non-Indian police officers and furthers the problem of underreporting crimes in Indian Country. Many Indians do not see police officers as helping the problem of crime within Indian Country and thus view police as more of a problem than a solution. Even victims of violence in Indian Country are often viewed the same stereotypical way.⁸⁵ Indeed, these stereotypes sometimes serve as an excuse for racial violence,⁸⁶ creating a situation in which cross-jurisdictional law-enforcement agreements fail to reduce criminal activity in

78. See PERRY, *supra* note 61, at 49.

79. *Id.* at 54.

80. *Id.*

81. *Id.* at 53.

82. *Id.*

83. *Id.* at 51.

84. *Id.* at 53-54.

85. *Id.* at 51.

86. *Id.*

Indian Country and actually cause an increase in underreporting of crimes within tribal lands.

D. The Reluctance Associated with Information Sharing and the Problems That Accompany Uninformed Law Enforcement

The interlocking relationships between tribal, state, and local governments can be remarkably complex.⁸⁷ Because of the complexities involved, a system must be implemented that allows for the apprehension, adjudication, and incarceration of criminals regardless of their Indian or non-Indian ethnicity. Cross-jurisdictional communication is vital for state-tribal law-enforcement agreements to succeed.⁸⁸ Unfortunately, information sharing between tribes and local entities is rarely done for many reasons.⁸⁹ First, many tribes simply do not have the computer capacity to share information with non-Indian jurisdictions in the form of data collection and reporting.⁹⁰ Second, many tribes “do not want to enter crime data on tribal members into an external data base where their control of the data may be lost.”⁹¹

Another reason is that many tribal members feel that the tribe has a “responsibility to protect its members from any negative [criminal] consequence[s],” and sharing information such as DWI/DUI records may result in enhanced penalties to repeat offenders in state courts.⁹² This reasoning can be especially troubling to non-Indians, who might view this logic as a means of concealing vital information about Indian offenders in hopes of circumventing the alleged suspect’s appropriate punishment. Complicating matters further, many tribes do not participate in data research, leaving the BIA unable to collect accurate crime statistics on reservations due to sparse or unreliable information.⁹³

Information sharing serves a vital purpose to tribal and non-Indian officers alike. Officers can be put in compromising situations and their safety can be at risk if the first-responding officer is without access to criminal histories of all participants in the incident, including the criminal histories of non-Indians

87. WILKINSON, *supra* note 12, at 48.

88. WILKINS ET AL., *supra* note 38, at 29.

89. *Id.*

90. Eileen Luna-Firebaugh, Assoc. Professor, Univ. of Ariz., Address at the Sovereignty Symposium: Criminal Justice Issues in Indian Country (May 31, 2007), *available at* <http://www.ncsl.org/Portals/1/documents/statetribe/CJIssuesLuna.pdf>.

91. *Id.*

92. Melton et al., *supra* note 59, at 9.

93. See WILKINS ET AL., *supra* note 38, at 29.

and Indians from other tribes.⁹⁴ Scenarios such as where an Indian tribe has jurisdiction over a domestic dispute, but a potential offender flees to state jurisdiction, is another instance where cross-jurisdictional information sharing is essential to determining the status of tribally issued protective orders or warrants.⁹⁵

Data integration between tribes and local jurisdictions would create a more efficient and effective way to ensure uniformity and justice in cross-jurisdictional law-enforcement agreements. Today, very few tribal justice-integration efforts and even fewer justice-integration systems exist in which tribes can share data with local non-Indian entities and other tribes.⁹⁶ Without a willingness to share information, police officers are put in dangerous situations, and cross-jurisdictional law-enforcement agreements will not create the necessary benefits that would justify their enactment.

III. Perplexing Problems That Arise Within the Court System upon Arrest

A tribal court is broadly defined as:

a court administered through self-government of an American Indian tribe, especially on a reservation and having federally prescribed jurisdiction over custody and adoption cases involving tribal children, criminal jurisdiction over offenses committed on tribal lands by members of the tribe, and broader civil jurisdiction over claims between tribe members and nonmembers.⁹⁷

Many tribal court systems have borrowed extensively from American court systems, but many have also developed their own elaborate rules of procedure and evidence.⁹⁸ Indian tribal courts often look to informal methods of dispute resolution, relying on tribal traditions to administer justice as a viable way of asserting their inherent sovereignty while reinforcing and practicing their distinct cultural values.⁹⁹ Along with the confusion that currently exists in determining which law-enforcement agency has the authority to act, state and tribal courts further confound the jurisdictional nightmare through inconsistencies in the administration of justice between the court systems. These inconsistencies that arise in the procedures of state and tribal courts are

94. *Id.* at 8.

95. *Id.*

96. *Id.* at 11.

97. MERRIAM-WEBSTER'S DICTIONARY OF LAW 503 (7th ed. 1996).

98. WILKINSON, *supra* note 12, at 89.

99. *Id.*

counterproductive to establishing uniformity among adjudication efforts, preventing cross-jurisdictional law-enforcement agreements from being productive.

Just like the uncertainty as to which law-enforcement agency has the appropriate authority to enforce laws, state and tribal courts are faced with similar problems about the scope of their respective jurisdictions. These complexities make successful collaboration through cross-jurisdictional law-enforcement agreements extremely difficult.¹⁰⁰ As with sharing a crime database between tribal and non-Indian law-enforcement officers, it is equally important that tribal courts and state courts share information “so that judgments or orders issued in one jurisdiction are known and enforced by neighboring jurisdictions.”¹⁰¹

A. Tribal Courts Lose Their Purpose and Necessity

Tribal policing, an important assertion of tribal sovereignty, lies at the heart of the tribal legal system.¹⁰² In theory, functioning tribal courts benefit surrounding non-Indian communities.¹⁰³ The existence of tribal courts helps local communities by “alleviat[ing] some of the case load on municipal and county courts.”¹⁰⁴ Tribal courts also “enable tribes to better regulate and control potentially harmful activities on Indian land.”¹⁰⁵ Crucially, education of local communities about the overall benefits of tribal courts and tribal courts’ limitations keeps these communities from turning on “tribal court[s] when the interest of a non-Indian are . . . adversely affected.”¹⁰⁶ Without education, communities and state courts misunderstand “tribal court procedures and are cautious when confronted with tribal court orders because they believe that tribal court systems do not comply with the same standards as state courts.”¹⁰⁷

Tribal courts often impose very different punishments from those of state and federal courts.¹⁰⁸ Tribal courts tend to be more informal, serving as

100. WILKINS ET AL., *supra* note 38, at 9.

101. *Id.*

102. LUNA-FIREBAUGH, *supra* note 41, at 130.

103. CAROLE GOLDBERG-AMBROSE, PLANTING TAIL FEATHERS: TRIBAL SURVIVAL AND PUBLIC LAW 280, at 209 (1997).

104. *Id.*

105. *Id.*

106. *Id.*

107. B.J. Jones, Role of Indian Tribal Courts in the Justice System 13 (Mar. 2000) (unpublished monograph), available at <http://www.icctc.org/Tribal%20Courts-final.pdf>.

108. See Abrams, *supra* note 42, at 148-49.

forums for arbitration, conciliation, and restoring social harmony rather than for punishment¹⁰⁹—“[s]ometimes the penalt[ies] may not satisfy the judges in the state court, but they are tailored to get better results on the reservation.”¹¹⁰

Whether the decisions of tribal judges in fact tend to create better results on the reservation, local police officers often prove unwilling to accept the possibility that suspects will face “lesser” punishments from tribal courts. As a result, and in part because of cross-jurisdictional law-enforcement agreements, non-Indian police officers who arrest Indians on tribal land will often choose to refer the suspect to state court rather than tribal court in the belief that the suspect will be punished more severely there than in tribal court.¹¹¹ This creates a problem for tribal and state courts alike. Tribal courts, long a symbol of sovereignty and self-governance within Indian Country, may have lesser significance and a continually decreasing role as state courts’ dockets continue to fill up with Indians arrested by non-Indian police officers. This will further burden the state court system with offenses that could easily (and properly) be adjudicated in tribal courts.

B. Inevitable Tort Actions During Police Enforcement Create Uncertainty

One significant problem raised by many who oppose cross-jurisdictional law-enforcement agreements is the likelihood of tort actions that arise if an officer acts inappropriately and the question of where liability for that conduct will rest. For example, of the thirty-nine county sheriffs in the state of Washington, thirty-eight of them oppose a bill that would expand tribal police officers’ power to arrest non-Indian criminal suspects on reservations.¹¹² The sheriffs oppose the proposed law because they are worried about their liability in the event of a lawsuit concerning a tribal officer’s actions.¹¹³ The common belief of these sheriffs is that allowing tribal police to arrest non-Indian suspects will cause higher rates of inappropriate police action due to lack of training in the tribal police force.¹¹⁴ Tribally funded agencies are typically plagued by a wide array of barriers that make it difficult to train their police officers properly.¹¹⁵ Tribal members have stated, however, that they believe

109. LUNA-FIREBAUGH, *supra* note 41, at 29.

110. Abrams, *supra* note 42, at 149.

111. *Id.*

112. Roesler, *supra* note 50.

113. *Id.*

114. *Id.*

115. PERRY, *supra* note 61, at 101.

non-Indians' theories that tribal officers have insufficient training compared with that of non-Indian officers is "presumptuous" and "inaccurate."¹¹⁶

Some state legislation tends to comport with the sheriffs' assumptions about the lack of tribal training. Washington state law requires that persons hired as police officers have six months from the beginning of employment to commence basic law-enforcement training, and there is no exception to this requirement for commissioned tribal officers.¹¹⁷ In 2006, the Washington State Legislature adopted legislation requiring tribal officers to become certified as peace officers before enforcing state and local criminal laws.¹¹⁸ Yet it is difficult for tribes to allow their officers, who are often a part of a very minute tribal police force, to go off-duty long enough to attend state or federal certification programs.¹¹⁹ Furthermore, the few officers who do attend certification courses rarely finish the certification process,¹²⁰ a fact largely due to the distance from home of the training sessions and the failure of programs to meet the officer's specific training needs.¹²¹ Instead, tribal officers are often put through more culturally specific training by their tribal governments.¹²² Much of this culturally specific training would also greatly benefit non-Indian law-enforcement personnel—if cross-jurisdictional law-enforcement agreements have any chance of significantly improving law enforcement in Indian Country.

Many cross-jurisdictional law-enforcement agreements already in effect allow a local sheriff's department to have authority over tribal officers whenever those officers are in that department's county, even when the tribal officers are on tribal lands.¹²³ This underscores the notion that Indians have historically and continuously "been constrained and disempowered" by the policing trends within Indian Country, ultimately facilitating the "criminalization and victimization" of Indians as a whole.¹²⁴ Furthermore, this type of agreement harms tribal sovereignty by relegating Indian police to a submissive role with non-Indian law-enforcement officials, taking away from

116. Roesler, *supra* note 50 (quoting Scott Smith, chief of Tulalip tribal police).

117. WASH. REV. CODE § 43.101.200(1) (2009).

118. *Id.* § 43.101.157.

119. PERRY, *supra* note 61, at 101.

120. *Id.*

121. *Id.*

122. *Id.*

123. Tim Barnum, *Still No Deal Worked Out Between Sheriff's Office, Tribal Police*, ARENAC COUNTY INDEP. (Standish, Mich.), July 16, 2009, available at <http://www.arenac-independent.com/detail/81430.html> (describing a past Arenac County, Mich. agreement).

124. PERRY, *supra* note 61, at 104.

their authority and independence. The requirement that tribal police officers go through the same training as non-Indian police officers not only challenges the concept of self-determination for Indians, but also lessens the powers of the tribal police force by essentially adding another officer to a local police force rather than to the tribal police force.

This view of tribal law-enforcement training starts tribal police officers on an unequal footing from the very beginning of cross-jurisdictional law-enforcement agreements and likewise creates a view of tribal police officers as “inferior.” This could be seen by some as a minor price to pay for enhanced police enforcement on tribal lands, but the commonly held belief that tribal police officers are undertrained could cast significant doubt on the appropriateness of the actions of tribal police officers in case a tort lawsuit ensues from an arrest. Allowing tribal police to be the first responders to crime scenes and also to make arrests of non-Indians may open a floodgate of complicated and complex litigation. For example, if both a tribal police officer and a non-Indian police officer respond to a call and as a result of police misconduct a tort action ensues, discrimination and beliefs as to proper training techniques could tip the scales of liability heavily toward the tribal police officer.¹²⁵

To combat the overwhelming possibility that tribal police officers will be subject to liability in the event of officer misconduct, some type of hold-harmless clause must be implemented into cross-jurisdictional law-enforcement agreements. A hold-harmless clause prevents either the tribal or local police force from becoming a defendant in a lawsuit if an employee of one department is “sued for allegations that the officer did something worthy of a lawsuit while assisting on the scene with [the other police force] without a formal request to assist.”¹²⁶ A hold-harmless clause in cross-jurisdictional law-enforcement agreements would help somewhat in the effective adjudication of a lawsuit in the event that one arises; not all lawsuits, however, will fall neatly into the protection of the clause. In order completely to eliminate the potential burden of having liability being placed on a tribal police department for misconduct by non-Indian police (or vice versa), the police forces must stay entirely separate and distinct entities. This will avoid confusion in the event of a lawsuit and cause liability to fall only on the police department that is responsible for the inappropriate actions.

125. *See id.* at 97-102.

126. Barnum, *supra* note 123.

IV. Economic Implications of Cross-Jurisdictional Law-Enforcement Agreements

Although some larger tribes are well-known for their economic self-sufficiency, many Indian tribes are economically unstable.¹²⁷ This fact tends to lend support to the notion of cross-jurisdictional law-enforcement agreements, but one has to wonder about the burdens this extra workload will place on non-Indian police forces and the impact the increased workload will have on the effectiveness of local law enforcement. Smaller Indian tribes with few police officers will essentially be seeking a free handout of law-enforcement personnel without being able to compensate states or contribute to the increased funding required to expand local law-enforcement jurisdiction. Comparatively, large tribes with large law-enforcement budgets who are located near smaller rural communities will be forced to increase their workload to accommodate the extended jurisdictional boundaries created by these cross-jurisdictional law-enforcement agreements.

Tribal law enforcement is severely underfunded.¹²⁸ Tribes have a spending level of approximately \$83 in public-safety funds per resident, compared with \$104 per resident in non-Indian communities.¹²⁹ When viewed in light of the potential cross-jurisdictional law-enforcement agreements, one would think that tribal policing per resident would increase as a result of the heightened spending accompanying the non-Indian police forces' presence in Indian Country. But realistically, as non-Indian police forces' spending per resident decreases as a result of the additional tribal-land jurisdiction, policing in Indian Country will also decrease as non-Indians have fewer dollars to spend on their own residents. The decreased resources will then be spread more thinly and the long-standing animosity, racism, and stereotypes against Native Americans as prone to criminality will continue to hinder non-Indian police officers from adequately policing Indian Country. Thus, the effect of these cross-jurisdictional law-enforcement agreements would be only to further dilute the public-safety funds per resident in non-Indian communities and cause non-Indian police forces to work harder in order to maintain the same level of policing in non-Indian communities as before the agreements. And all of this will take place while non-Indian police forces continue to neglect Indian communities.

127. See Wagner, *supra* note 45, at 533-34.

128. LUNA-FIREBAUGH, *supra* note 41, at 15.

129. STEWART WAKELING ET AL., POLICING ON AMERICAN INDIAN RESERVATIONS: A REPORT TO THE NATIONAL INSTITUTE OF JUSTICE 27 (2001).

When funding restraints are coupled with raised expectations of higher police presence in Indian communities, the disappointing result that likely ensues will “be very demoralizing for a [tribal] government and a citizenry.”¹³⁰ For a more realistic way to raise policing in Indian Country, tribes should seriously examine their own funding sources for tribal policing efforts. By reapportioning monies to fund a police force that will be autonomous from state and local police forces, tribes will further promote the concept of inherent sovereignty.

The belief that cross-jurisdictional law-enforcement agreements will increase the funding of tribal police departments while maintaining autonomy within tribal policing is naïve at best. In the current economic climate, non-Indian police agencies are already being understaffed, facing lower funding, and requiring personnel cuts in order to meet their budgets.¹³¹ Indeed, law-enforcement departments throughout the United States face “budget constraints, the need to recruit and train law enforcement officers, and a lack of up-to-date technology.”¹³² These problems are only intensified in the specific context of the notoriously underfunded police departments of Indian tribes.¹³³ By expanding the jurisdictional boundaries of already-overextended non-Indian police departments, the problem will only increase as law-enforcement personnel both from local and tribal police departments become burdened with larger geographic and jurisdictional boundaries.

The rural nature of most tribal lands, coupled with the widely dispersed populations within Indian Country, has caused state- and locally trained police officers to struggle in the administration of justice.¹³⁴ These officers are often without cell-phone towers or landlines and have restricted car-radio service, limited paved roads, and relatively few 911 emergency-response systems.¹³⁵ While Indian police officers who routinely patrol tribal lands might be accustomed to working without these tools, significant amounts of training would be required to acquaint state and local police officers with the nuances of patrolling tribal lands. Costs associated with this training would only further burden the severely restrained budgets of police forces and are an expense that would prove unnecessary if Indian police forces remained autonomous.

130. LUNA-FIREBAUGH, *supra* note 41, at 16.

131. See Kevin Bohn, *Police Face Cuts as Economy Falters*, CNN, Oct. 23, 2008, <http://www.cnn.com/2008/CRIME/10/23/police.economy/>.

132. LUNA-FIREBAUGH, *supra* note 41, at 14.

133. *Id.* at 14-15.

134. *Id.*

135. *Id.*

Finally, tribes that choose to have autonomous tribal police forces will have law-enforcement agencies that are accountable only to the tribes themselves, rather than to state or local governments. Through responsible policing efforts and accountability to their communities, these independent tribal police forces continue to carry forward and promote Indian traditions of tribal sovereignty and self-governance.

V. Cross-Jurisdictional Law-Enforcement Agreements Significantly Impair Tribal Self-Determination and Sovereignty

*In many cases, state jurisdiction over matters tribal has become (or continues to be) intrusive and disruptive upon tribal life. As inherent sovereigns in constant interaction with the states and the national government, the tribes must continually defend their right to self-government.*¹³⁶

Tribal policing in the United States represents a crucial link in the “realization of Native sovereignty to the extent that it is a reflection of tribal rights to shape and enforce their own laws.”¹³⁷ “A tribal police department, if nothing else, serves as a declaration of sovereignty, of the intent of a tribal government to protect and serve its own citizens, and to render justice in a manner understandable to and supported by the community.”¹³⁸ A truly sovereign justice system would be completely rooted in the values of the Indian community it serves and not be bound by any broader political agenda.¹³⁹

Tribal policing is the heart of the tribal legal system.¹⁴⁰ Indian police departments first developed out of the tradition of service to Indian communities and a personal sense of responsibility of tribal members to protect and serve their communities.¹⁴¹ Notably, tribal administrators and citizens view the role of tribal police as essential to maintaining the self-governance of Indians and believe that tribal police serve as the embodiment of sovereignty and justice on a daily basis.¹⁴² Most, if not all, Indians consider

136. Carol Tebben, *Trifederalism in the Aftermath of Teague: The Interaction of State and Tribal Courts in Wisconsin*, 26 AM. INDIAN L. REV. 177, 178-79 (2001-2002).

137. PERRY, *supra* note 61, at 100.

138. LUNA-FIREBAUGH, *supra* note 41, at 8.

139. Douglas M. Skoog, *Taking Control: Native Self-Government and Native Policing, in NATIVE AMERICANS, CRIME, AND JUSTICE*, *supra* note 28, at 118, 128-29.

140. LUNA-FIREBAUGH, *supra* note 41, at 130.

141. *Id.* at 126.

142. *Id.* at 127.

being viewed as a useful person the ultimate compliment, and the commitment of tribal police to serve their tribes despite the disadvantages of high crime rates, inadequate funding, low salaries, and lack of material resources such as police cars, radios, or complex computer databases is something to be revered in Indian culture.¹⁴³

Tribal police have been described as having a bad reputation and as being among the worst police forces in America because they are more “plagued by nepotism, lack of training, high job turnover, and lower pay” than other police forces.¹⁴⁴ But that is the perception of state and local police forces—the very police forces currently diminishing tribal sovereignty by entering into cross-jurisdictional law-enforcement agreements in which they would gain control of policing Indian Country. Continual pressure to assimilate into American culture and give up tribal sovereignty downplays the tradition of honor that has long been associated with serving in tribal law enforcement and further reduces the inherent sovereignty of Indian tribes.

Further underscoring the need for a tribal police force is the reality that traditional local police forces are adversarial and therefore antithetical to the traditional tribal view that police forces should be focused on conciliation and conflict resolution.¹⁴⁵ “While some may argue that Native persons do commit more offenses than others, this has no effect on Native people’s *perception* that they are singled out for the coercive attention of the police.”¹⁴⁶ Indians have an overall “uncharitable attitude toward [non-Indian police officers] and fault the police for at least some proportion of their over-representation in the criminal justice system.”¹⁴⁷ This view solidifies the belief among tribes that an autonomous police force would be more sensitive to the needs of Indians and serve tribes more effectively.¹⁴⁸ Cross-jurisdictional law-enforcement agreements would not only cause distrust in police forces as traditional tribal police officers are replaced by non-Indian police officers on tribal lands, but would also significantly reduce the amount of self-governance and sovereignty that Indians have an inherent right to possess.

Tribes would also lose their ability to police their lands in a manner conducive to the traditions and history of Indian police departments’ roles as

143. *Id.*

144. Sidney Harring, *Native American Crime in the United States*, in *INDIANS AND CRIMINAL JUSTICE* 93, 102 (Laurence French ed., 1982).

145. Skoog, *supra* note 139, at 121.

146. *Id.*

147. *Id.*

148. *Id.*

peacekeepers and resolvers of conflict.¹⁴⁹ “Peace and harmony, the principal goals to which traditional Aboriginal concepts of justice were geared, have not been accommodated easily by an adversarial and adjudicative system.”¹⁵⁰ “‘Policing,’ as the larger society uses the term, may be counterproductive” to Native American culture and does not produce just solutions to the problems with crime faced on tribal lands because Indian culture is not accustomed to the adversarial stance of traditional non-Indian law enforcement.¹⁵¹

Cross-jurisdictional law-enforcement agreements have also eroded the prestige that once accompanied being a tribal law-enforcement official. Tribes have difficulty finding and recruiting educated, experienced police officers, and “the attrition rate for trained [officers] is very high, with people often leaving for more highly paid positions in the non-Indian community.”¹⁵² This does not come as a surprise—the sole appeal of joining a tribe’s police force has always been the prestige and honor that accompanies the job, not the salary or working conditions. Indeed, some tribal members have even accepted jobs with tribal police forces that cannot offer any cars, radios, or other traditional police equipment.¹⁵³ By entering cross-jurisdictional law-enforcement agreements, tribes dilute the honor that once accompanied a position on a tribe’s police force.

Furthermore, tribes seem all too willing to give up an innate piece of their sovereignty by conceding their exclusive right to patrol, protect, and serve Indian Country by the means of a tribal police department. Although the desire still exists among Indian tribes to be truly sovereign and self-governing, legal and administrative obstacles create difficulties in maintaining a strong tribal police force that adequately represents the sovereign status of Indian tribes.¹⁵⁴ Despite these obstacles, tribal governments must remain committed to the idea that tribal law enforcement is an essential and successful assertion of a tribe’s inherent sovereignty.

149. *Id.*

150. *Id.* (quoting A.C. HAMILTON & C.M. SINCLAIR, *THE JUSTICE SYSTEM AND ABORIGINAL PEOPLE: REPORT OF THE ABORIGINAL JUSTICE INQUIRY OF MANITOBA* (1991)).

151. *Id.*

152. LUNA-FIREBAUGH, *supra* note 41, at 128.

153. Edward C. Byrne, *The Oneida Tribal Police: Politics and Law Enforcement*, in *NATIVE AMERICANS, CRIME, AND JUSTICE*, *supra* note 28, at 114, 115.

154. Skoog, *supra* note 139, at 127.

VI. Conclusion

The inherent sovereignty that Chief Justice John Marshall expressed in *Worcester v. Georgia*¹⁵⁵ is at risk from the continued acceptance of agreements between Indian tribes and local communities. Although only the federal government can limit the inherent sovereignty of Indian tribes, many tribes are freely offering to extinguish a piece of their sovereignty to local communities in an effort to cut costs, increase efficiency, or ensure domestic tranquility for their people.

The risks of cross-jurisdictional law enforcement are numerous. Indian tribes and local communities have long held feelings of distrust toward one another, causing racial implications to enter the decision-making process of tribes entering these agreements with state and local police forces. A serious look at the documented history of overpolicing and underpolicing of Indians has also cast significant doubt on the effectiveness these agreements will have on the desired outcome of making Indian Country safer. Confusion, complex jurisdictional problems (not only during arrest, but within the court systems), and misguided beliefs toward Indian culture all play a considerable part in further complicating the issue of cross-jurisdictional law-enforcement agreements. And finally, the cost of these agreements, coupled with the decrease in effective and efficient patrolling, gives rise to a telling argument that cross-jurisdictional law-enforcement agreements between tribal and non-Indian police forces are counterproductive not only to tribal sovereignty, but to the safety of Indians as well.

No shortcut or perceived increase in effectiveness is worth putting an entire tribe's inherent sovereignty in jeopardy. Allowing states any sort of power or control over a tribal jurisdiction's law enforcement is perilous and could prove to be one more step in the direction away from sustaining tribal sovereignty.

155. 31 U.S. (6 Pet.) 515 (1832).

